

**So Ordered.**



Patricia C Williams

**Patricia C. Williams  
Bankruptcy Judge**

**Dated: November 16th, 2012**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

10 In re: }  
11 LLS AMERICA, LLC, }  
12 Debtor. }  
13 \_\_\_\_\_ }  
14 BRUCE P. KRIEGMAN, solely in }  
15 his capacity as court-appointed }  
16 Chapter 11 Trustee for LLS America, }  
17 LLC, }  
18 Plaintiff, }  
19 vs. }  
TIRTHO ARK, }  
Defendant. }  
No. 09-06194-PCW11  
Adv. No. 11-80124-PCW  
MEMORANDUM DECISION RE:  
DEFENDANT TIRTHO ARK'S  
MOTION TO DISMISS (ECF NO. 7)

This adversary is one of hundreds commenced by the trustee of the LLS America, LLC (“LLS America”) bankruptcy estate, which adversaries seek, pursuant to 11 U.S.C. § 548 and other causes of action, to recover money paid by the debtor to certain lenders or investors as part of an alleged Ponzi scheme conducted by the debtor. Defendant Tirtho Ark filed a motion to dismiss on December 17, 2011, ECF No. 7.

In a similar adversary, *Kriegman v. Cooper*, No. 11-80093-PCW, a written decision was entered on July 2, 2012, ECF No. 146, regarding similar motions to dismiss and an oral decision was rendered on May 24, 2012, ECF No. 118, on the issue of

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1 pleading fraud with particularity (“Previous Decision”). The issues regarding dismissal  
2 raised in the subject motion are the same as those raised in the Previous Decision. Many  
3 of the facts in the Previous Decision are relevant to the subject motion.

4 By affidavit of Duane Swinton (ECF No. 17), the trustee presented evidence in  
5 this case that the defendant loaned or invested \$80,000 (CAN) and five (5) promissory  
6 notes were issued. In 109 distributions occurring from October 2004 to January 2009,  
7 the defendant received \$398,425.42 (CAN) and \$62,213.08 (USD). According to the  
8 trustee, the defendant filed proofs of claims in the amount of \$80,000 (CAN) and  
9 \$25,000 (USD) in the underlying LLS America case. By declaration (ECF No. 10), the  
10 defendant presented evidence that he resides in Canada, rarely travels to the United  
11 States, and each promissory note listed a Canadian entity as borrower with distributions  
12 primarily made from Canadian entities. The declaration further states that the loans or  
13 investments were solicited in Canada, but no details were provided regarding the manner  
14 of solicitation.

15 The grounds for dismissal in the subject motion are: (1) ineffective service of  
16 process; (2) improper extraterritorial application of United States bankruptcy law; and  
17 (3) failure to state the alleged fraud with particularity as required by Fed. R. Civ. P.  
18 (9)(b). The reasoning regarding the denial of dismissal based on those grounds is set  
19 forth in the Previous Decision and is applicable to the subject motion.

20 As in the Previous Decision, one basis for the request to dismiss is the lack of  
21 personal jurisdiction. As articulated in the Previous Decision, the filing of a proof of  
22 claim is a consent to jurisdiction to adjudicate that claim and the related action brought  
23 by the trustee of the LLS America estate under 11 U.S.C. § 548. The reasoning regarding  
24 the denial of dismissal based upon a consent to personal jurisdiction is set forth in the  
25 Previous Decision and is applicable to the subject motion, which is **DENIED**. Counsel  
26 for the defendant shall submit an order consistent with this decision.

28 //END OF MEMORANDUM DECISION///